

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

EDWARD SABATINO,)	
)	
Plaintiff)	
)	
v.)	Civil No. 96-0048-B
)	
MARTIN MAGNUSSON, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

Plaintiff's Complaint in the above-entitled action involves his refusal to submit to a drug test while housed at the Maine State Prison. Plaintiff was thereafter transferred to the Maine Correctional Institution ["MCI"], a higher security unit. Plaintiff appears to complain that the drug test request and resulting disciplinary action violated his right to due process, and that the conditions at MCI violate his right to cruel and unusual punishment.

Defendants move to dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff's timely response to the Motion addresses only Defendants' arguments with respect to Plaintiff's due process claims. As to the Eighth Amendment claim, he is deemed to have waived objection. D. Me. R. 19(c).

Plaintiff apparently asserts that the Maine State Prison does not have an "active urine testing program" in place that utilizes Department of Corrections Guidelines with respect to such testing, and that Defendant Struck's request for a urine sample in the face of this deficiency somehow violated Plaintiff's right to due process. He further claims a due process violation in his transfer to MCI on the grounds that his selection for transfer was accomplished to satisfy Defendant O'Farrell's

“personal agenda.” The Court has difficulty making such connections. As Defendants point out, an inmate’s due process right is not implicated by conditions which are not “atypical and significant hardship[s] on the inmate in relation to the ordinary incidents of prison life,” *Sandin v. Conner*, 115 S. Ct. 2293, 2300 (1995), or “will [not] inevitably affect the duration of his sentence.” *Id.* at 2302. Clearly, a prisoner may be placed at any one of a number of institutions within the Department of Corrections, and such placement alone would not constitute “atypical and significant hardship.” Further, the due process clause does not require compliance with internal policies and procedures.

Conclusion

For the foregoing reasons, I hereby recommend Defendant’s Motion to Dismiss be GRANTED in its entirety.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on July 17, 1996.